1180.

SUPREME COURT OF THE UNITED STATES.

No. 149.

JACOB B. BROWN, JACOB NISSWANER, FONTAINE BECKHAM, JOHN C. UNSELD, AND GEORGE W. MOLER, PLAINTIFFS IN ERROR,

vs.

BENJAMIN HUGER.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE WESTERN DISTRICT OF VIRGINIA.

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STATE OF VIRGINIA, *to wit.*

Pleas before the Honorable John W. Brockenbrough, judge of the district court of the United States for the western district of Virginia, held at the court-house at Staunton, on the fourteenth day of October, in the year one thousand eight hundred and fifty-four.

Be it remembered, that heretofore, to wit, at a district court of the United States for the western district of Virginia, at Staunton as aforesaid, on the fourth day of May, in the year one thousand eight hundred and fifty-three, being the first day of the session, came Benjamin Huger, by James M. Mason, esquire, his attorney, and filed a transcript of the proceedings had before the circuit court of Jefferson county for the State of Virginia, in a certain action of ejectment thereinbefore depending, and which transcript is in the words and figures following, to wit:

VIRGINIA, *to wit.*

In the Circuit Court of Jefferson County.

Among the records and proceedings in the circuit court of Jefferson county are the following, to wit:

Be it known, that heretofore, to wit, in the clerk's office of the aforesaid court, at rules on the 6th day of April, 1852, came Jacob B. Brown, Jacob Nisswaner, Fontaine Beckham, John C. Unseld, and George Washington Moler, and by their counsel filed their declaration in ejectment against Benjamin Huger, which declaration and the note thereunder written, with the return of the sheriff thereon, are in the words and figures following:

(*Copy of Declaration.*)

JEFFERSON COUNTY,
Virginia, to wit.

1st count. Jacob B. Brown, Jacob Nisswaner, Fontaine Beckham, John C. Unseld, and George Washington Moler, complain of Benjamin Huger, who was summoned to answer, &c., of a plea, wherefore he, the said Benjamin Huger, heretofore, to wit, on the 1st day of April, 1852, at the county aforesaid, with force and arms, &c., entered into thirty-nine acres and two roods of land, with divers work-shops, dwelling-houses, and other buildings thereon, situated in the county aforesaid, at the confluence of the Potomac and Shenandoah rivers, and bounded as follows, to wit: Beginning at the angle of the wall at the present junction of the rivers aforesaid, running thence up the Shenandoah, with its meanders, S. 48° 31′ W. 39.4 poles; thence S. 64° 15 W. 32 poles;

thence S. 85° 45′ W. 18 poles; thence N. 55° W. 13.5 poles; thence leaving the river N. 55° 24′ E. at 2.5 poles, a point supposed by Jacob B. Brown to be a corner of Robert Harper's patent for one hundred and twenty-five acres, containing, as he considers it with the same, in all 75.5 poles to a point in or near Shenandoah street, in the vicinity of the office formerly occupied by the United States superintendent, claimed by said Brown to be the original "sycamore" on the point; thence again, as directed by the same, N. 58° 52½ W. 200 to a point in the United States canal, claimed to be the place of the chestnut tree called for in the patent; thence N. 86° 30′ E. 7 poles to the Potomac river, and thence down the same, with the meanders thereof, S. 80° 15′ E. 34 poles; thence S. 72° 45′ E. 20 poles; thence S. 68° 15′ E. 26 poles; thence S. 58° E. 9 poles; thence S. 51° 15′ E. 14 poles to the end of the Potomac river bridge, and S. 22° 15′ E. 12 poles to the beginning, and ejected said plaintiffs from said tract of land, with the appurtenances thereof, and other wrongs to the said plaintiffs then and there did, to the great damage of the said plaintiffs and against the peace and dignity of the Commonwealth. And thereupon the said plaintiffs aver that they were possessed of the said tract of land, with the appurtenances thereof, on the first day of April, 1852, by an absolute title in fee simple, and being so possessed thereof, the said defendants afterwards, to wit, on said first day of April, 1852, entered into said tract of land, with the appurtenances thereof, and unlawfully withholds from the plaintiffs the possession thereof, to their damage one million of dollars.

2d count. And the said Jacob B. Brown complains of said Benjamin Huger, who was summoned to answer, &c., of a plea, wherefore he, the said Benjamin Huger, heretofore, to wit, on the first day of April, 1852, at the county aforesaid, with force and arms entered into one undivided moiety of thirty-nine acres and two roods of land, with divers workshops, dwelling-houses, and other buildings thereon, situated in the county aforesaid, at the confluence of the Potomac and Shenandoah rivers, being the same as described by metes and bounds in the foregoing first count of this declaration, and ejected said Jacob B. Brown from said undivided moiety of said tract of land, with the appurtenances thereof, and other wrongs to him, the said Jacob B. Brown, then and there did, to the great damage of him, the said Jacob B. Brown, and against the peace and dignity of the Commonwealth. And thereupon, the said Jacob B. Brown avers that, on the 1st day of August, 1851, he was possessed of an undivided moiety of said tract of land, with the appurtenances thereof, by an absolute title in fee simple; and, being so possessed thereof, that the said Benjamin Huger afterwards, to wit, on the 31st day of March, 1852, entered into said tract of land, with the appurtenances thereof, and that he unlawfully withholds from the said Jacob B. Brown the possession

of the said undivided moiety of the same, to the damage of the said Jacob B. Brown in the sum of five hundred thousand dollars.

3d count. And the said Jacob Nisswaner complains of the said Benjamin Huger, who was summoned to answer, &c., of a plea, wherefore he, the said Benjamin Huger, heretofore, to wit, on the 1st day of April, 1852, at the county aforesaid, with force and arms, &c., entered into an undivided twenty and three-fourth hundredth part of thirty-nine acres and two roods of land, with divers workshops, dwelling-houses, and other buildings upon it, situated in the county aforesaid, at the confluence of the Potomac and Shenandoah rivers, being the same as described by metes and bounds in the foregoing first count of this declaration, and ejected the said Jacob Nisswaner from the said twenty and three-fourth hundredth undivided part of said tract of land, with the appurtenances thereof, and other wrongs to him, the said Jacob Nisswaner, and against the peace and dignity of the Commonwealth. And thereupon, the said Jacob Nisswaner avers that, on the 31st day of March, 1852, he was possessed of an undivided twenty and three-fourth hundredth part of said tract of land, with the appurtenances thereof, by an absolute title in fee simple; and, being so possessed thereof, that the said Benjamin Huger afterwards, to wit, on the 1st day of April, 1852, entered into said tract of land, with the appurtenances thereof, and that he unlawfully withholds from the said Jacob Nisswaner the possession of said undivided twenty and three-fourth hundredth part thereof, to the damage of said Jacob Nisswaner five hundred thousand dollars.

4th count. And the said Fontaine Beckham complains of the said Benjamin Huger, who was summoned to answer, &c., of a plea, wherefore he, the said Benjamin Huger, heretofore, to wit, on the first day of April, 1852, at the county aforesaid, with force and arms entered into an undivided twelve and one-eighth hundredth part of thirty-nine acres and two roods of land, with divers workshops, dwelling and other buildings thereupon, situated in the county aforesaid, at the confluence of the Potomac and Shenandoah rivers, being the same as described by metes and bounds in the foregoing first count of this declaration, and ejected the said Fontaine Beckham from said undivided twelve and one-eighth hundredth part thereof, and other wrongs to him, the said Fontaine Beckham, then and there did, to the great damage of the said Fontaine Beckham, and against the peace and dignity of the Commonwealth. And thereupon, the said Fontaine Beckham avers that, on the 31st day of December, 1851, he was possessed of an undivided twelve and one-eighth hundredth part of said tract of land, with the appurtenances thereof, by an absolute title in fee simple; and, being so possessed thereof, that the said Benjamin Huger afterwards, to wit, on the 1st day of January, 1852, entered into said tract of land, with the appurtenances thereof, and that he

unlawfully withholds from him, the said Fontaine Beckham, the possession of said undivided twelve and one-eighth hundredth part of said tract of land, with the appurtenances thereof, to the damage of said Fontaine Beckham in the sum of five hundred thousand dollars.

5th count. And the said John C. Unseld complains of said Benjamin Huger, who was summoned, &c., to answer, &c., of a plea, wherefore the said Benjamin Huger, heretofore, to wit, on the 1st day of April, 1852, at the county aforesaid, with force and arms, &c., entered into an undivided nine one-hundredth part of thirty-nine acres and two roods of land, with divers workshops, dwelling and other buildings thereupon, situated in the county aforesaid, at the confluence of the Potomac and Shenandoah rivers, being the same as described by metes and bounds in the foregoing first count of this declaration, and ejected said John C. Unseld from said undivided nine one-hundredth part thereof, and other wrongs to him, the said John C. Unseld, then and there did, to the great damage of the said John C. Unseld, and against the peace and dignity of the Commonwealth. And thereupon, the said John C. Unseld avers that, on the 31st day of March, 1852, he was possessed of an undivided nine one-hundredth part of said tract of land, with the appurtenances thereof, by an absolute title in fee simple; and, being so possessed thereof, that he, the said Benjamin Huger, afterwards, to wit, on the 1st day of April, 1852, entered into said tract of land, with the appurtenances thereof, and that he unlawfully withholds from said John C. Unseld the possession of the said undivided nine one-hundredth part thereof, to the damage of the said John C. Unseld five hundred thousand dollars.

6th count. And the said George Washington Moler complains of the said Benjamin Huger, who was summoned, &c., answer, &c., of a plea, wherefore he, the said Benjamin Huger, heretofore, to wit, on the 1st day of April, 1852, at the county aforesaid, with force and arms, &c., entered into an undivided eight and one-eighth hundredth part of thirty-nine acres and two roods of land, with divers workshops, dwellings, and other buildings thereon, situated in the county aforesaid, at the confluence of the Potomac and Shenandoah rivers, being the same as described by metes and bounds in the foregoing first count in this declaration, and ejected said George Washington Moler from said undivided eight and one-eighth hundredth part of said tract of land, with the appurtenances thereof, and other wrongs to him, the said George Washington Moler, then and there did, to the great damage of the said George Washington Moler, and against the peace and dignity of the Commonwealth. And thereupon, the said George Washington Moler avers that, on the 31st day of March, 1852, he was possessed of an undivided eight and one-eighth hundredth part of said tract of land, with the appurtenances thereof, by an absolute title in fee simple; and,

being so possessed thereof, that the said Benjamin Huger afterwards, to wit, on the 1st day of April, 1852, entered into said tract of land, with the appurtenances thereof, and that he unlawfully withholds from the said George Washington Moler the possession of the said undivided eight and one-eighth hundredth part thereof, to the damage of said George Washington Moler in the sum of five hundred thousand dollars.

Wherefore the said Jacob B. Brown, Jacob Nisswaner, Fontaine Beckham, John C. Unseld, and George Washington Moler, jointly and each separately, say they are injured, and have sustained damage, as in the said several counts alleges, and therefore they bring suit.

JONES, CONRAD & HUNTER. *p. q.*

To Col. BENJAMIN HUGER.

SIR: Please take notice, that the foregoing declaration will be filed in the clerk's office of circuit court of Jefferson county, at the April rules, 1852, being the first Monday of said month.

April 2d, 1852.

Respectfully,
JACOB B. BROWN,
JACOB NISSWANER,
FONTAINE BECKHAM,
JOHN C. UNSELD,
GEORGE W. MOLER.

By JONES, CONRAD & HUNTER,
Their Attorneys.

Rule to Plead.

Whereupon, it appearing that Benjamin Huger, the tenant in possession of the premises, hath been duly served with a copy of the said declaration and note thereunder written, and he not appearing, though solemnly called, it is ordered that, unless he appear and plead at the rules to be holden in the clerk's office of the said court on the first Monday in May next, his default will be entered, and judgment given against him.

Default entered.

At rules held in the clerk's office of the said court, on the 3d day of May, 1852, the defendant having been duly served with a copy of the rules entered in this cause on the 6th day of last month, and he still failing to appear and plead, on the motion of the plaintiffs, by their counsel, it is now ordered that the order made against the defendant at the last rules be confirmed.

Petition to Remove, &c.

At a circuit court, continued and held for the county of Jefferson, on the 26th day of May, 1852, the defendant this day appeared at the suit of the plaintiffs, and filed a petition for the removal thereof to the next circuit court of the United having jurisdiction thereof, pursuant to the act of Congress of the United States entitled "An act to establish the judicial courts of the United States," approved 24th September, 1789, on the ground that he, the said defendant, is not a citizen of the State, but a citizen of the State of South Carolina, which circuit court, as stated in said petition, is the district court of the United States for the western district of Virginia, holden at Staunton, having circuit court jurisdiction; and also offered good and sufficient security for his entering in such court, on its first day of its session, copies of said process against him, and also for his entering special bail in the cause, if the same shall be in law required; and thereupon, on the motion of the said plaintiffs, and to enable them to answer said petition, this cause is continued until the next term.

And afterwards, to wit, at a term of the circuit court of Jefferson county, continued and held on the 28th day of October, 1852, the defendant, having at the last term of this court entered his appearance at the suit of the plaintiffs, and filed his petition for the removal thereof into the district court of the United States for the western district of Virginia, holden at Staunton, having by law circuit court jurisdiction, this day came into court, and gave good and sufficient security for his entering into such court on the first day of the next session—copies of the process issued against him, pursuant to an act of Congress entitled "An act to establish the judicial courts of the United States." The court accepted the security, and will proceed no further in the cause.

Petition for Removal.

To the Circuit Court for the county of Jefferson, in Virginia:

The petition of Benjamin Huger respectfully shows:

That an action of ejectment has been instituted and is now depending in this court against your petitioner as defendant, wherein a certain Jacob B. Brown, Jacob Nisswaner, Fontaine Beckham, John C. Unseld, and George Washington Moler are plaintiffs. Your petitioner respectfully shows, that he is not a citizen of the State of Virginia, but that he is a citizen of the State of South Carolina, and that the subject in controversy exceeds in value the sum of $500; and he prays, therefore, pursuant to the 12th section of an act of Congress of the United States, entitled "An act to establish the judicial courts of the United States," approved 20th September, 1789, that said cause may be removed to "the next circuit court"

of the United States, "to be held in the district where the said is depending," to proceed there "in the same manner as if it had been brought there by original process;" which circuit court having proper jurisdiction, your petitioner is advised, is the district court of the United States for the western district of Virginia, holden at Staunton, having by law circuit court jurisdiction.

And your petitioner here "offers to the court good and sufficient surety for his entering in such court, on the first day of its session, copies of said process against him, and also for his entering special bail in the cause, if the same shall in law be required; and he further offers herewith proof that he is, as above alleged, a citizen of the State of South Carolina.

And your petitioner, &c., &c., &c.

BENJAMIN HUGER.
By J. M. MASON,
His Attorney at Law.

24th of May, 1852.

Deposition filed with Petition.

BROWN and OTHERS, Plaintiffs, vs. BENJAMIN HUGER, Defendant. } Ejectment.

In the Circuit Court of Jefferson county.

Questions propounded on the part of the defendant to the Hon. A. P. Butler, of South Carolina, to be read in evidence on a motion by petition of said defendant to remove said cause to the circuit court of the United States.

Question 1st. Are you acquainted with the defendant named above, who is an officer of the army of the United States, and now in command of the United States arsenal at Harper's Ferry, and how long have you known him?

Question 2d. Can you state of what State the said defendant is a citizen? and be good enough, in your answer, to give all the information you have, tending to show the citizenship thus inquired into.

To the first interrogatory I answer: I am acquainted with Col. Benjamin Huger, now commandant at Harper's Ferry, and have been for more than twenty years.

To your second I answer: I regard Col. Benjamin Huger as at this time a citizen of South Carolina.

1st. He is a native of that State, and his ancestors for generations have been citizens of the same.

2d. He was commissioned in the army as a citizen of South Carolina, and as a cadet of the Military Academy appointed from the same.

3d. In applying for a warrant in the navy for one of his sons, he did so as a citizen of South Carolina.

4th. He married in South Carolina, and has the actual ownership of a plantation and slaves in that State, which he cultivates, and by the Constitution of South Carolina is entitled to vote there.

A. P. BUTLER.

WASHINGTON, *May 19th*, 1852.

The foregoing it is agreed shall be read as evidence in the same manner as a deposition regularly taken.

AND. HUNTER,
For Pl'ffs.

Copy of General Orders from War Department to Col. Benjamin Huger.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, 19th July, 1851.

General Orders No. 39.

Extract.

11. The Secretary of War directs the assignment of officers of ordnance to duties and stations as follows:

Capt. Huger to Harper's Ferry armory, Virginia. The Col. of Ordnance will give the necessary preliminary instructions for carrying out the foregoing assignment.

(Signed) R. JONES,
Adj't Gen'l.

ORDNANCE OFFICE, *Washington, July 24th*, 1851.

BREV. COL. B. HUGER,
Fort Monroe Arsenal.

SIR: On the arrival at your post of Brevet Major J. D. Ramsay, who has been directed to relieve you thereof, you will turn over to him all public funds, books, papers, and property, in your charge, after which you will proceed to Harper's Ferry armory, Va., the station assigned to you by General Orders No. 39 of 1851.

In the meantime you will make all requisite preliminary arrangements for turning over your command, and for closing your accounts pertaining to Fort Monroe arsenal. All accounts, returns, and reports, due from you for the past quarter and fiscal year, will be transmitted to this office with as little delay as practicable.

Respectfully, your ob't servant,

(Signed) H. K. CRAIG,
Col. Ordn.

ORDNANCE OFFICE, *Washington, May 17th*, 1852.

I hereby certify that the foregoing extract from General Orders No. 39, bearing date July 19th, 1851, and letter from the Ordnance Office to Brevet Col. B. Huger, dated July 20th, 1851, both in relation to placing him in command of Harper's Ferry armory, Virginia, are true copies from the originals. I further certify that, in obedience to the aforesaid orders, he assumed command of that armory on the 1st day of October, 1851; that he has continued to be the commanding officer from that day to the present time; and that he will continue so to be the commanding officer until otherwise duly relieved therefrom. And I do also certify that Benjamin Huger was admitted a cadet to the U. S. Military Academy, from the State of South Carolina, on the 1st of July, 1821; commissioned a second lieutenant in the 3d regiment of artillery, July 1st, 1825; appointed a captain of ordnance, May 30th, 1832; brevetted as major, March 29th, 1847; brevetted as lieutenant colonel, September 8th, 1847; brevetted as colonel, September 13th, 1847; that he has never left the service, but has continued in the military service of the country from the time he was first commissioned, July 1st, 1825, to the date hereof; and that his rank at the present time is captain of ordnance, and colonel by brevet, in the army of the United States.

H. K. CRAIG,
Col. Ordnance.

WAR DEPARTMENT, *Washington, May* 17, 1852.

I hereby certify that Henry K. Craig, whose name is appended to the foregoing certificate, is now, and was at the time of executing the same, Colonel of the Ordnance Department, duly commissioned as such, and that full faith and credence are due to his acts as such; and I further certify that Brevet Colonel Benjamin Huger is the commanding officer of Harper's Ferry armory, duly assigned to that command by order of this department. I also further certify that the time of said Huger's entering the military service of the United States, his different promotions therein, and his present rank, are correctly stated in said certificate, and that he is at the present time an officer in the United States army.

Given under my hand and the seal of the War Department, this [SEAL.] 17th day of May, A. D. 1852.

C. M. CONRAD,
Sec'ty of War.

(Copy of bond executed by the defendant, Benjamin Huger, and filed with petition praying to remove cause to the next circuit court of the United States, viz:)

Know all men by these presents, that we, Benjamin Huger, of South Carolina, and James M. Mason, of Virginia, are held and

firmly bound unto Jacob B. Brown, John C. Unseld, Jacob Nisswaner, Fontaine Beckham, and George Washington Moler, in the just and full sum of two hundred dollars, lawful money of the United States, to be paid to them, the said Jacob B. Brown, John C. Unseld, Jacob Nisswaner, Fontaine Beckham, and George Washington Moler, when lawfully demanded, for payment whereof well and truly to be made, the said Benjamin Huger and James M. Mason hereby bind themselves, their heirs, executors, and administrators, firmly by these presents. Witness our hands and seals this 28th day of October, 1852.

The condition of the above obligation is such, that whereas an action of ejectment has been commenced in the circuit court of Jefferson county by the said Brown, Unseld, Nisewaner, Beckham, and Moler against the said Benjamin Huger, defendant, and the said Huger being a citizen of the State of South Carolina, hath, in pursuance of the act of Congress entitled "An act to establish the judicial courts of the United States," filed a petition for the removal of said cause for trial into the next circuit court of the United States, to be held in the district where the said suit is depending, being the district court of the United States for the western district of Virginia, holden at Staunton, having by law circuit court jurisdiction: Now, if the said Benjamin Huger do enter, or cause to be entered, in the said last named court, on the first day of its next session, copies of the process against said defendant in the said suit, then this obligation to be void, or else to remain in full force and virtue.

BENJA. HUGER, *Col. U. S. A.* [L. S.]
J. M. MASON. [L. S.]

Signed, sealed, and delivered in the presence of—
ROBERT T. BROWN,
Clerk of the Circuit Court of Jefferson County, Va.

Approved: RICHARD PARKER.

True copies. Teste: ROBERT T. BROWN,
Clerk of the Circuit Court of Jefferson County, Virginia.

And thereupon the following order was entered:

Order in District Court.

JACOB B. BROWN, JACOB NISSWANER, FONTAINE BECKHAM, JOHN C. UNSELD, and GEORGE WASHINGTON MOLER, Demandants, against BENJAMIN HUGER, Tenant.	In Ejectment, to recover 39 acres and 2 roods of land, with divers work-shops, dwelling-houses, and other buildings thereon.

This cause having been instituted in the circuit court of Jefferson county, and the said tenant having filed his petition and evidence

setting forth and proving that he is not, and was not at the time of commencing said cause, a citizen of the State of Virginia, and that the matter in dispute exceeds the value of five hundred dollars, exclusive of costs, and having in other particulars complied with the requisitions of law, and the said circuit court having, in pursuance of the act of Congress, section 12, passed the 24th of September, 1789, removed said cause to this court—copies of all which proceedings have been duly certified to, and are now filed in this court—it is ordered that the said cause shall be proceeded in, in the same manner as if it had been brought by original process in this court.

And another day of said court, to wit, at a district court of the United States held for the district aforesaid, at Staunton, on the 5th day of October, 1853, came, as well the plaintiffs by their attorney as the defendant by his attorney, and, on motion of the plaintiffs, it is ordered that George Mauzey do go upon the land in controversy on the first day of November next, if fair—if not, the next fair day, or such other day as he may fix on, and notify the parties of, and survey and lay out the same as either party shall require, and return three fair plats and reports thereof to the court; and that such depositions of witnesses as the parties may produce may be taken according to law, then and there, and returned with the said plats and reports; and the marshal of this court, if required, shall attend the said survey and remove force, if any shall be offered.

In pursuance of which order, the said George Mauzey made and *turned* his reports, a copy of one of which reports is hereto appended as part of this record, marked A.

And at another day of said court, to wit, at a district court of the United States, held for the district aforesaid at Staunton the 5th day of May, 1854, this order was entered:

On motion of the defendant it is ordered, that Archibald D. Trotter do go upon the lands in controversy and survey and lay out the same as either party may require, and return five fair plats and reports to the court; and the trial of the cause is continued until the next term, at the costs of the defendant.

The said Archibald D. Trotter, in pursuance of the foregoing order, made and returned his report, a copy whereof is hereto appended as part of this record, marked B.

And at another term of said district court, to wit, at the term first herein mentioned, held the 6th of October, 1854, this order was entered:

This day came the parties, by their attorneys, and on motion of the defendant, by his attorney, it is ordered that the conditional order entered in this cause in the circuit court of Jefferson county be set aside; and thereupon the said defendant, by his attorney, comes and defends the force and injury, when, &c., and saith that he is not guilty in manner and form as the plaintiffs against them have complained, and of this he puts himself upon the country, and the plaintiffs do the like; whereupon came a jury, to wit:

Jacob Baylor, Benjamin Crawford, William Jones, George McCarr, Joseph A. Thompson, William Harris, N. H. Garrison, John Hindman, John B. Breckinridge, James Walker, Joseph Long, and William A. Abney, who were duly elected, tried, and sworn the truth to speak upon the issue joined; but not having time to hear in full the testimony of witnesses, were adjourned over until to-morrow morning at 10 o'clock.

On which day came again the parties, by their attorneys, and the jury, who were adjourned over on yesterday, appeared pursuant to adjournment, and the evidence was further heard; but there not being time to go through with it, the jury and the further trial of the cause were adjourned over until Monday morning next at 10 o'clock.

On which day came again the parties, by their attorneys, and the jury, who were adjourned over on Saturday, appeared pursuant to adjournment, and the evidence was further heard; but there not being time to go through with it, the jury and the trial of the cause were adjourned until to-morrow morning at 10 o'clock.

On which day came again the parties, by their attorneys, and the jury, who were adjourned over on yesterday, appeared in court pursuant to their adjournment, and the evidence was further heard; but there not being time to go through with it, the jury and the further trial of the cause were adjourned until to-morrow morning at 10 o'clock.

On which day came again the parties, by their attorneys, and the jury, who were adjourned over on yesterday, appeared in court pursuant to adjournment, and having heard all the evidence, and there not being time to hear the arguments of counsel, the jury and the further trial of the cause are adjourned until to-morrow morning at 10 o'clock.

On which day came again the parties, by their attorneys, and the jury, adjourned over on yesterday, appeared in court pursuant to adjournment, and the arguments of counsel being partly heard, and there not being time to complete the same, the jury are adjourned until to-morrow morning at 10 o'clock.

On which day came again the parties, by their attorneys, and the jury, adjourned over on yesterday, appeared in court pursuant to adjournment, and the arguments of counsel being fully heard; but instructions being asked, the court takes until to-morrow to consider the same, and the jury were thereupon adjourned until to-morrow morning at 10 o'clock.

And now, at this day, being the day and year first herein mentioned, to wit, October the 14th, 1854, came again the parties, by their attorneys, and the jury, adjourned over on yesterday, appeared in court according to adjournment, and after hearing the instructions of the court as asked for by the defendant, upon their oath do say, that the defendant is not guilty of the trespass and ejectment

in the declaration complained of, as, impleading, he hath alleged; therefore it is considered by the court that the plaintiffs take nothing by their bill, but for their false clamor be in mercy, &c.; and that the defendant go thereof without day, and recover against the plaintiffs his costs by him about his defence in this behalf expended.

Memorandum.—On the trial of this cause, being one wherein an appeal lies to the Supreme Court, the plaintiffs, by their attorneys, excepted to an opinion of the court given upon the said trial, and tendered their bill of exceptions, which was received, signed, and sealed by the court, and is ordered to be made a part of the record in the cause, which bill of exceptions is in the words and figures following, that is to say:

BROWN, &c.,
vs.
HUGER.

Memorandum.—On the trial of this cause the plaintiffs, to sustain the issue on their part, introduced a patent from John F. Wiley, esquire, lieutenant governor of Va., to the pl'ffs, Jacob B. Brown and Jacob Nisswaner, dated 29th July, 1851, in the following words and figures:

John F. Wiley, esquire, Lieutenant Governor, acting as Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that, in conformity with a survey made on the twenty-third day of December, one thousand eight hundred and fifty, by virtue of Land Office treasury warrant No. 18,702, there is granted by the said Commonwealth unto Jacob B. Brown and Jacob Nisswaner a certain tract or parcel of land, containing thirty-nine acres and two roods, lying in the county of Jefferson, at the confluence of the rivers Potomac and Shenandoah, and bounded as follows, viz: Beginning at the angle in the wall at the present junction of the rivers aforesaid; running thence up the Shenandoah, with its meanders, S. 48° 30′ W. 39.4 poles; thence S. 64° 15 W. 32 poles; thence S. 85° 45′ W. 18 poles; thence N. 55° W. 13.5 poles; thence leaving the river N. 59° 24′ E. at 2.5 poles, a point supposed by Jacob B. Brown to be a corner to Robert Harper's patent for one hundred and twenty-five acres, continuing, as he considers it, with the same, in all 74.5 poles to a point in or near Shenandoah street, in the vicinity of the office formerly occupied by the United States superintendent, claimed by the said Brown to be the original corner sycamore "on the point;" thence again, as directed by the same, N. 58° 52½′ W. 200 p's to a point in the United States canal, claimed to be the place of the chestnut tree called for in the patent; thence N. 86° 30′ E. 17 poles to the Potomac river; and thence down the same, with its meanders, S. 80° 15 E. 34 poles; thence

S. 72° 45′ E. 20 poles; thence S. 68° 15′ E. 26 poles; thence S. 58° E. 9 poles; thence S. 51° 15′ E. 114 p's to the end of the Potomac river bridge; and finally S. 22° 15′ E. 12 p's to the beginning, with its appurtenances: To have and to hold the said tract or parcel of land, with its appurtenances, to the said Jacob B. Brown and Jacob Nisswaner, and their heirs, forever.

In witness whereof, the said John F. Wiley, esquire, lieutenant governor of the Commonwealth of Virginia, hath hereunto set his hand; and caused the lesser seal of the said Com-
[SEAL.] monwealth to be affixed, at Richmond, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and fifty-one, and of the Commonwealth the seventy-sixth.

JOHN F. WILY.

Endorsed: Jacob B. Brown and Jacob Nisswaner have title to the within granted land.

S. H. PARKER,
Reg. L. Office.

Also a deed from said Jacob Nisswaner and wife to Fountain Beckham, the pl'ff, in the words and figures following, viz:

Whereas Jacob B. Brown and Jacob Nisswaner have obtained from the land office of the State of Virginia a patent in thirty-nine and a half acres of land lying on the Shenandoah and Potomac rivers, at Harper's Ferry, in the county of Jefferson, (which had been previously located under a warrant from said land office,) said patent having issued July 29th, 1851, the number thereof being 18,702; and whereas the intent and purpose of the said Jacob Nisswaner to *contain* to Fontain Beckham, for the consideration hereinafter named, one-half of his the said Nisswaner's present interest in the property covered by said patent, the same being equal to thirty-two and one-half per cent. upon the whole value of said property: This deed made this 20th day of August, 1851, between Jacob Nisswaner and Eliza Nisswaner his wife, of the county of Washington, and State of Maryland, of the one part, and Fontaine Beckham, of the county of Jefferson and State of Virginia, of the other part, witnesseth: That in consideration of the sum of five hundred dollars, the said Jacob Nisswaner and Eliza his wife do grant unto the said Fontaine Beckham an interest, right and title, in and to the lands and other property covered by a patent issued from the land office of the State of Virginia in favor of Jacob B. Brown and Jacob Nisswaner on the 29th July, 1851, above described, equal to sixteen and one quarter per cent. upon the total value of all the land and other property covered by said patent.

Witness the following signatures and seals.

JACOB NISSWANER. [SEAL.]
ELIZA NISSWANER. [SEAL.]

VIRGINIA, *Jefferson County, sct.*

I, William T. Dougherty, notary public for the county aforesaid, do hereby certify that Jacob Nisswaner, whose name is signed to the foregoing deed, bearing date August 20, 1851, personally appeared before me in my said county, and acknowledged the same to be his act and deed.

Given under my hand this 25 August, 1851.

WM. T. DAUGHERTY, *N. P.*

VIRGINIA, *Jefferson County, to wit.*

I, William T. Daugherty, notary public in and for the county aforesaid, do hereby certify that Eliza Nisswaner, wife of Jacob Nisswaner, whose names are signed to the foregoing deed, bearing date August 20th, 1851, personally appeared before us in my said county, and having the writing aforesaid fully explained to her, and being examined by me privily and apart from her said husband, and declared that she had willingly executed the same, and that she wished not to retract it.

Given under my hand this 20th August, 1851.

WM. T. DAUGHERTY, *N. P.*

VIRGINIA, *Jefferson County, sct.*

CLERK'S OFFICE OF THE COUNTY COURT.

On the 29th day of August, 1851, the foregoing deed was received in the said office, and admitted to record.

Teste: T. A. MOORE, *Cl'k.*

A copy. Teste: T. A. MOORE, *Cl'k.*

Also a deed from Jacob Nisswaner to the plaintiff, John C. Unseld, in the words and figures following, viz:

Whereas Jacob B. Brown and Jacob Nisswaner have obtained from the land office of the State of Virginia a warrant for the purpose of locating it upon waste and unappropriated lands; and whereas the said warrant has been located upon such lands at Harper's Ferry, in the county of Jefferson and State aforesaid, upon the Potomac and Shenandoah rivers, and for which a patent is expected to issue; and whereas the said Jacob Nisswaner has at present in the lands so located, or the amount for which the same may be sold, *and* interest or title equal to thirty-two and one-half per cent. of the whole amount or value of said property; and whereas the said Jacob Nisswaner is desirous of conveying to John C. Unseld an interest in said property equal to five per cent. upon the total value of said property, or the amount for which the same may be sold:

Now, therefore, this deed, made this 2d day of August, 1851, between Jacob Nisswaner, of the one part, and John C. Unseld, of the other part, witnesseth: That the said Jacob Nisswaner does, out of interest in the property hereinbefore mentioned, for the consideration of two hundred and twenty-five dollars to him in hand paid, the receipt whereof is hereby acknowledged, bargain, sell, and convey unto the said John C. Unseld, out of his interest in said property, an interest of equal to five per cent. upon the total value of said property, or the am't for which the same may be sold.

Witness the following signature and seal.

JACOB NISSWANER. [SEAL.]

VIRGINIA, *Jefferson County, sct.*

I, Wm. T. Daugherty, notary public for the county of Jefferson and State of Virginia, do hereby certify that Jacob Nisswaner, whose name is signed to the foregoing annexed deed, dated 2d day of August, 1851, personally appeared before me in my said county, and acknowledged the same to be his act and deed.

Given under my hand this 2d day of August, 1851.

WM. T. DOUGHERTY,
Notary Public.

VIRGINIA, *Jefferson County, sct.*

On the 2d day of August, 1851, the foregoing deed was received in the said office, and admitted to record.

Teste: T. A. MOORE, *Cl'k.*

A copy. Teste: T. A. MOORE, *Cl'k.*

Also a deed from the said Fountain Beckham to the pl'ff, George W. Moler, in the words and figures following, viz:

Whereas Jacob B. Brown and Jacob Nisswaner have obtained from the land office of the State of Va. a warrant for the purpose of locating it upon lands within the State of Virginia, denominated "waste and unappropriated lands;" and whereas the said warrant has been located upon lands lying at Harper's Ferry, in the county of Jefferson and State of Virginia, upon the Potomac and Shenandoah rivers, for which a patent is expected to be issued at an early day; and whereas the said Jacob Nisswaner has conveyed by deed, dated July 17th, 1851, to Fontaine Beckham one-half of his, the said Nisswaner's, interest in the property which is covered or may be recovered by said warrant and patent, and given the said Fontaine Beckham power to dispose of the same as he may think best for his own use; and whereas the said Fontaine Beckham is desirous, for the consideration hereinafter named, to convey to George W. Moler one-half of the proportion or quantity of said property conveyed to him, to wit, one-half of sixteen and one-quarter per cent. of the total value of the land, money, or other

property conveyed by said warrant and patent, the interest of said Jacob Nisswaner, prior to said deed to Fontaine Beckham, being thirty-two and one-half per cent. upon the total value of the *value of the* property covered by said warrant and patent to said Brown and Nisswaner:

Now, therefore, this deed witnesseth, that the said Fontaine Beckham, for and in consideration of the sum of five hundred dollars, (acting for his own use, but under the deed to him from said Jacob Nisswaner as aforesaid,) doth hereby convey to the said George W. Moler one-half part of the aforesaid sixteen and one-quarter per cent. of the total value of the land or other property covered by said warrant and patent; that is to say, one-half part of the property conveyed said Fontaine Beckham by Jacob Nisswaner by said deed, dated July 17th, 1851, to the said George W. Moler, his heirs, and assigns.

In testimony whereof, the said Fontaine Beckham has hereto affixed his hand and seal this 21st day of July, 1851.

F. BECKHAM. [SEAL.]

VIRGINIA, *Jefferson County, to wit.*

I, William T. Dougherty, notary public in and for the county of Jefferson and State of Virginia, do hereby certify that Fontaine Beckham, whose name is signed to the foregoing deed, dated July, 1851, personally appeared before me in my county, and acknowledged the same to be his act and deed.

Given under my hand this 20th day of July, 1851.

WM. T. DOUGHERTY,
Notary Public.

VIRGINIA, *Jefferson County, sct.*

In the County Court.

At a court held for the said county, on the 18th day of August, 1851, the foregoing deed was produced to the court, and ordered to be recorded.

Teste: T. A. MOORE, *Clerk.*

Memo.—The deed to me from Jacob Nisswaner and wife, for the interest or claim to unappropriated land, one-half of which is conveyed by the above and within deed to George W. Moler, bearing date the 20th day of August, 1851, which date is subsequent to the date of my deed to said Moler; the deed made by me to said Moler, which is dated July 24th, 1851, and has been admitted to record according to law, on the 18th day of this month, is hereby confirmed by me in every particular.

Given under my hand and seal this 29th day of August, 1851.

F. BECKHAM. [SEAL.]

A copy. Teste: T. A. MOORE, *Clerk.*

The pl'ff also introduced in evidence the plat and report of the surveyor, A. Trotter, made in pursuance of an order of survey heretofore made in this cause, in the words and figures, lines and courses following. See the copy thereof appended to this record, marked B[1]. And the pl'ffs introduced the evidence of said survey, &c., and others, to prove that the land granted in the aforesaid patent was correctly laid down and described by its metes and bounds in said plat, and that the def't was in possession thereof at the commencement of this suit.

The def't then, on his part, introduced in evidence *on his part* the duly certified copy of a grant from Thomas Lord Fairfax to Robert Harper, of the county of Frederick, dated 25th day of April, 1851, in the words and figures following, viz:

"The right honorable Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain called Scotland, proprietor of the Northern Neck of Virginia.

"To all to whom this present writing shall come, sends greeting:

"Know ye, that for good causes, for and in consideration of the composition to me paid, and for the annual rent hereafter received, I have given, granted, and confirmed, and by these presents for me, my heirs and assigns, do give, grant, and confirm unto Robert Harper, of the county of Frederick, a certain tract of waste and ungranted lands in the said county, at the mouth of Shannandoah river, and is bounded as by a survey thereof made by Guy Broadwater, as followeth: Beginning at a sycamore standing on the edge of Shannandoah river, and extending thence down the said river N. 48° W., 200 N. 66 E. seventy-two poles to a sycamore standing at the point, and thence up Potomack river N. 48° W., two hundred poles to a chestnut tree standing near Potomack, opposite to a small island; thence W. one hundred and five poles to a white oak; thence south one hundred and forty poles to a red oak; thence east one hundred and fifty poles to the beginning, containing one hundred and twenty-five acres, together with all rights, members, and appurtenances thereunto belonging, royal mines excepted, and a full third part of all lead, copper, tin, coals, iron mines, and iron ore, that shall be found thereon:

"To have and to hold the said one hundred and twenty-five acres of land, together with all rights, profits, and benefits to the same belonging, or in anywise appertaining, except before excepted to him, the said Robert Harper, his heirs and assigns forever.

"He, the said Robert Harper, his heirs or assigns, therefore, yielding and paying to me, my heirs or assigns, or to my certain attorney or attorneys, agent or agents, or to the certain attorney or attorneys of my heirs or assigns, proprietors of the said Northern Neck, yearly and every year on the feast of St. Michael, the archangel, the fee-rent of one shilling sterling money for every fifty

acres of land hereby granted, and so proportionably for a greater or lesser quantity: Provided, That if the said Robert Harper, his heirs or assigns, shall not pay the before reserved annual rent, so that the same, or any part thereof, shall be behind or unpaid by the space of two whole years after the same shall become due, if lawfully demanded, that then it shall and may be lawful for me, my heirs or assigns, proprietors as aforesaid, my or their certain attorney or attorneys, agent or agents, into the above granted premises to re-enter and hold the same so as if this grant had never passed.

"Given at my office, in the county of Fairfax, within my said proprietary, under my hand and seal; dated this twenty-fifth day of April, in the twenty-fourth year of the reign of our sovereign lord, George the Second, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c., A. D. one thousand seven hundred and fifty-one.

"FAIRFAX."

VIRGINIA LAND OFFICE,
Richmond, March 20, 1854.

I certify the foregoing to be a true copy from the records of this office.

S. H. PARKER, *Reg. L. Office.*

Also, the will of the said Robert Harper, dated 26th Sept., 1782, and a codicil thereto, dated 1st Oct., 1782, in the words and figures following, viz:

In the name of God, Amen.

I, Robert Harper, of Berkeley county, in the Commonwealth of Virginia, being sick and weak in body, but sound in memory and judgment, calling to mind the frailty and vicissitude of life and succeeding eternity, do hereby make, constitute, ordain, and appoint this to be my last will and testament, revoking, allowing, and rescinding all other wills or testaments by me heretofore made, in manner and form as follows, viz:

I leave my body to the earth, to be buried in a decent manner, at the discretion of my executors after mentioned, and recommend my soul to the hands of that God who gave it, in hopes of a glorious resurrection through the alone merit and atonement of our Lord and Saviour Jesus Christ; and for what worldly estate it hath pleased God to bestow on me, I give, leave and bequeath as follows, after my just debts, death-bed and funeral expenses are paid off, viz:

Imprimis. I give, leave and bequeath to my nephew, Robert Griffith, one moiety or half of my ferry survey, to form a straight direct line to run along the two fences on the east side, or that side

next to the ferry, the one fence lying on the north and the other on the south side of the road leading from the ferry to Winchester, the sides of the above mentioned fences to be a director, or to show where each end of the division line shall terminate. The end of the line leading to Potomack to terminate as soon as it strikes that river; the end leading to Shenandoah to keep a straight till it likewise strikes said river, and to contain and include the island opposite where the said line strikes; then to run in my line, joining Sample's line, to continue with said line and to include ninety acres of a new survey; thence to continue its course till where the division line shall strike Potomac river, including therewith my saw-mill and grist-mill, with all the utensils belonging to both mills. Likewise, I do leave unto my said nephew all my movable estate whatsoever, except my negro wench, Bench.

2dly. I give, leave, and bequeath to my niece, Sarah Harper, daughter of my brother, Joseph Harper, joiner and cabinetmaker, late of Philadelphia, or her heirs, my ferry and ferry-house on Potomac river, and all the remainder of my ferry survey, not before devised to Robert Griffith, together with all my estate, right, and title to the Maryland shore of the said ferry; and also all my estate, right, title to, and for ten acres upon, what is called the Big Island of Potomac river, adjoining the ferry aforesaid. But it is my will that neither my said niece, or her husband, if alive, shall enjoy the said ferry and lands hereby demised and bequeathed longer than their natural life or lives. And it is likewise my will, that my said niece, Sarah, or her husband, shall and may have full power and authority to leave and bequeath the said ferry and lands to them demised as above, to either of their sons whom they shall judge most deserving thereof; and in case of failure of male issue, to leave and give the premises aforesaid to either of their daughters as may appear to them or the survivor of them most suitable. It is likewise my will that my debts, all and sundry, shall be paid out of the rents of my ferry by my executors after mentioned, who are hereby empowered to retain the same till all just claims and demands against my estate are paid and discharged.

Thirdly. It is my will, in consideration of what is above devised and made over to my said niece, Sarah, that she or her assigns shall be obliged to ferry over at the ferry above mentioned, passage free, any person or persons who shall bring with them grist of any kind to the mills on the lands now belonging to me, adjoining the same.

Fourthly. I hereby give, leave, and bequeath unto my nephew, Joseph Keen, a tract of land containing three hundred acres of land, lying at the mouth of Indian run, Sleepy creek, in Berkeley county, being the same as was purchased by me from Naaron Rice.

Fifthly. I hereby give, leave, and bequeath unto my nephews,

Robert Harper, Jonah Harper, Jonas Keen, Hezekiah Keen, and Israel Keen, the whole amount of what my negro wench, Beck, shall bring, to be equally divided and shared among them, and for that purpose it is my will that my executors shall, as soon as convenient for them, after my decease, cause the said negro wench, Beck, to be sold. And for the more sure carrying this my last will and testament to be put into due execution, I do hereby ordain, nominate, constitute, and appoint, and by these presents have ordained, nominated, constituted, and appointed my well-beloved friends, Edward Lucas, John Ryon, of Berkeley county, Robert Griffith, of Bedford county, in the Commonwealth of Virginia, to be my only true and lawful executors for the purposes before mentioned, hereby ratifying and confirming all and whatsoever my said attorneys shall lawfully do with regard to the premises; they, or either of them, shall not be liable to any neglect or *or* omissions respecting the same.

In witness whereof, I have hereunto set my hand and seal unto my last will and testament, this twenty-sixth day of September, in the year of our Lord one thousand seven hundred and eighty-two.

ROBERT HARPER. [L. S.]

Signed, sealed, published, pronounced, and declared by the said Robert Harper, to be his last will and testament, in presence of us—

R. McNIGHT,
T. HAMILTON,
JOHN DUNCAN,
WILLIAM DUNCAN,
WILLIAM DARKE.

Be it known to all men by these presents, that I, Robert Harper, of the county of Berkeley, and Commonwealth of Virginia, have made and declared my last will and testament in writing, bearing date the first day of October, one thousand seven hundred and eighty-two. I, Robert Harper, by this present codicil, do ratify and confirm my last will and testament; and it is further my last will that four acres of land, most convenient round my grave-yard, shall be laid off my executors, and be entirely appropriated to the use of a grave-yard; and all my debts due by bond, note, or book debt, and all the rents now due from my ferry, be by my executors disposed of in the best manner towards erecting a grave-yard and building a church on said four acres of land, and having a head and foot-stone for my wife's grave, and likewise for my own; and my will and meaning is, that this, my codicil, be adjudged to be a part and parcel of my last will and testament, and that all things contained therein be faithfully and truly performed, and as fully and amply in every respect as if the same had been declared and set down in my last will and testament.

As witness my hand this 1st day of October, one thousand seven hundred and eighty-two.

his
ROBERT R. HARPER. [L. S.]
mark.

Signed in presence of us—
RO. MCKNIGHT,
WM. DARKE,
JAMES CLAYPOOL.

At a court held for Berkeley county *county*, the 13th day of October, 1782, this last will and testament, together with the codicil thereto annexed, of Robert Harper, deceased, was presented in court by John Ryon, Edward Lucas, and Robert Griffith, the executors therein named, who made oath thereto according to law, and the same being proved by the oaths of Robert McKnight, William Darke, and William Duncan, witnesses thereto, and ordered to be recorded; and on motion of the said executors who entered into bond with William Darke and John Briscoe, jr., their securities in the penalty of five hundred pounds, conditioned for their true and faithful performance of administration of the said estate, certificate is granted them for obtaining a probate thereof in due form of law.

Teste: WILL. DREW, *Ct. Car.*

I do hereby certify that the foregoing is a true copy from the record.

Teste: JACOB VAN DOREN, *C. B. C.*
July 18th, 1850.

Also a deed of bargain and sale from John Wager, sen., and others, to George Washington, Pres't of the United States, in the words and figures following, viz:

This indenture, made this fifteenth day of June, in the year one thousand seven hundred and ninety-six, between John Wager, sen., and his wife Mercy, John Wager, junior, and Margaret Wager, all of Berkeley county, in the Commonwealth of Virginia, and Mary Wager, of the city of Philadelphia, of the one part, and George Washington, President of the United States, of the other part, witnesseth: That the said John Wager, sen., and his said wife, John Wager, jun., Margaret Wager, and Mary Wager, for and consideration of the sum of seven thousand and sixteen dollars and two-thirds of a dollar, lawful money, to them in hand paid before the ensealing and delivery of these presents, in account of the United States, by the said George Washington, President of the said United States, the receipt whereof they, the said John Wager, senior, and his said wife, John Wager, junior, Margaret Wager, and Mary Wager, do hereby acknowledge, and thereof the said

United States do forever exonerate and acquit, and for and in consideration of the covenants hereinafter reserved on the part of the United States to be kept and performed, have granted, bargained, and sold, alien, release, and confirm, and by these presents do grant, bargain, and sell, alien, release, and confirm unto the said George Washington, President of the United States, and his successors forever, the following parcels or tracts of land—that is to say, all inland in the river Potomac, opposite to Harper's Ferry, containing 20 acres, more or less; also, all that piece of land (except as hereinafter excepted) situated in the said county of Berkeley, commonly known by the name of Harper's Ferry tract, which was devised by the last will and testament of Robert Harper, bearing date on or about the twenty-sixth day of September, one thousand seven hundred and eighty-two, unto his niece, Sarah Harper, and is bounded by the river Potomack on the outside, by the river Shenandoah on another side, and by the line dividing it from the tract or parcel of land devised by the said Robert Harper unto Robert Griffith on the other side, excepting six acres, part thereof whereupon the buildings occupied by the said John Wager, senior, now stand, to be laid off in one parcel, and bounded by the road leading up the Shenandoah river on the one side, by the west side of the garden-fence belonging to the dwelling-house of the said John Wager, senior, and a line extending from thence northerly, to include a stable on the north side of said dwelling-house on another side; thence easterly till within 150 feet from the bank of the river Potomack; then southerly, till it strikes the road aforesaid, leading from the ferry up the Shenandoah; excepting also a piece of land for the ferry landing 110 feet from the bank of the river Potomack, *from the bank of that river Potomack*, near the north end of a stone house, down to the point where the waters of the Potomac and Shenandoah river join, the aforesaid piece of land being intended by the parties to lay along the bank of the river Potomac, and to be in all parts one hundred and ten feet wide from the said bank, and to begin on the said bank, near the said stone house, and to extend with the said river down to the point of junction with the Shenandoah, together with all houses, except as before excepted, ways and waters, except as is hereinafter provided and covenanted, woods, commodities, advantages, and hereditaments appertaining to the hereby granted premises belonging or in any manner appertaining, except as hereinbefore hath been or hereinafter shall be excepted or otherwise provided, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the right, title, and interest and claim in law or equity of them the said John Wager, senior, and his said wife, John Wager, jun'r, Margaret Wager and Mary Wager, and each of them, of, in, and concerning the premises herein granted, subject to the covenants, exceptions, and provisions

herein contained and expressed: To have and to hold the said parcels of land and appurtenances, except as herein excepted, reserved, and covenanted, unto him, the said George Wasington, President of the United States, and his successors forever, to and for the use and behoof of the said United States forever, and to and for no other use or behoof whatsoever, and free and clear of all and every charge and encumbrance whatever, except as herein contained and expressed. And the said George Washington, President of the United States, for himself and his successors, doth covenant and agree, for and in behalf of the said United States, with the said John Wager, sen'r, and his said wife, John Wager, junior, Margaret Wager and Mary Wager, and their heirs, executors, administrators and assigns, that the several owner or owners, possessor or possessors, occupier or occupiers of the land and premises herein and hereby excepted and not conveyed, and their heirs and assigns, shall have the right and privilege of keeping the public ferry or ferries from the said landing, at the junction of the said river, across each to the opposite shore, and of landing, at any time when the current of either river shall make it necessary, the boat or boats employed on the said ferriage, or any part of the hereby granted premises; and so long as the United States are furnished and accommodated with adequate means of transporting across each river, to and from the said ferry landing, whatsoever shall be requested for public use or purpose, it shall not be lawful for the said United States, at their own expense, to transport any person or thing from said ferry landing across either river, or from the opposite side of either river *river* to the said ferry landing; but whenever and so often as the United States shall not be furnished with *same* and immediate transportation of any person or persons, thing or things, to the end that unreasonable delay or interruption may not be suffered in their affairs, it shall be lawful for the United States aforesaid, at their own expense, to transport at, to and from the said ferry landing any person or persons, thing or things, on public account, which, for the general good, shall be expedient. And the said John Wager, sen'r, for himself and his heirs, executors and administrators, doth declare, covenant, and agree, to and with the said George Washington, President of the United States, and his successors forever, that he, the said John Wager, sen'r, in pursuance of the *interest* of the last will of Robert Harper, hath elected and appointed his son, the said John Wager, jun'r, to take and to have and to hold the said parcel of land devised by the last will aforesaid unto the said Sarah Harper, his late wife, who has departed this life without making any devise or appointment thereof; and that he, the said John Wager, senior, will not make any other appointment or any request whatsoever thereof. And it is mutually agreed between the said John Wager, senior, and his said wife, John Wager, jun'r, and Margaret Wager and Mary Wager, and their

respective heirs, on the one part, and the said George Washington, President of the United States, and his successors, on the other part, that it shall be lawful for Tobias Lear, his executors, administrators and assigns, to have and to hold and enjoy all that part of the hereby granted premises for and during the term of his contract—that is to say, for the space of seven years, commencing from the day of December last, anything to the contrary herein notwithstanding, but subject to such future agreement as the said Tobias Lear, his executors or administrators, shall make with the United States and the said John Wager, sen'r, and his said wife, John Wager, jun'r, Margaret Wager and Mary Wager severally, and for their several heirs, executors, and administrators,—the hereby granted premises and their appurtenances, subject to the exceptions and covenants and provisions aforesaid, unto him, the said George Washington, President of the United States, and his successors, for the use of the United States as aforesaid, against the said John Wager, sen'r, and his said wife, John Wager, jun'r, Margaret Wager, Mary Wager, and their heirs, jointly and severally, and against the claims of all and every person and persons whatsoever will warrant and shall forever defend by these presents.

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

JOHN WAGER, [SEAL.]
JOHN WAGER, JR., [SEAL.]
MARGARET WAGER, [SEAL.]
MARY WAGER. [SEAL.]

Signed, sealed, and delivered in the presence of—
ARTHUR SHAAF,
GEORGE SCOTT,
ROBERT WHITTELL,
As to John Wager, John Wager, jr., Margaret Wager.

And by the said Mary Wager, in the presence of us—
FRED'K BEALES,
PHIL. T. DUNN.

Memorandum of the courses of the six acres reserved to John Wager, jr., and mentioned in the foregoing deed, viz:

Beginning at a stake standing on the west side of the Ferry road, 150 feet from the banks of the river Potomac, and running thence S. 50 W. 26½ poles to a stake on the edge of a hill near the Shenandoah bottom, and on the side of a slate rock, between a mulberry and hop-wood tree, both marked with three chops on one side; thence N. 48 W. 210 poles to a chestnut tree on the side of a hill, marked as a corner; then No. 50 E. 22 poles to a stake at the side of a broad rock; then So. 53 E. 40 poles to the aforesaid begin-

ning, containing and now laid down for six acres of land, surveyed at the request of Mr. Tobias Lear, as being the six acres reserved by Mr. John Wager and others in the sale of their lands.

Given under my hand, May 17, 1796.

JOHN DAVENPORT.

A true copy. Witness:
JOHN WAGER,
JOHN WAGER, JUN.

Memorandum.—That, on the 15th day of June, one thousand seven hundred and ninety-six, we received from George Washington, President of the United States, on their account, by the hands of Tobias Lear, the sum of six thousand six hundred and sixty-six dollars and two-thirds of a dollar; also three hundred and fifty dollars; making the full consideration within mentioned, viz: seven thousand and sixteen dollars and two-thirds of a dollar. In witness whereof, we have hereunto set our hands and seals, the day and year last mentioned.

JOHN WAGER, [SEAL.]
JOHN WAGER, JR., [SEAL.]
MARGARET WAGER, [SEAL.]
MARY WAGER, [SEAL.]
GO. WASHINGTON. [SEAL.]

Attested by
ARTHUR SHAAFF, and
GEORGE SCOTT, JR.,
ROBERT WHITTELL,
as to John Wager, John Wager, jun., and Margaret Wager.

And to the signing of the said Mary Wager, by us—
FRED'K BEALES,
PHIL. T. DUNN.

Witness at the signature of Geo. Washington—
THOMAS PETER,
GEO. W. CRAIK.

Whereas certain causes have prevented the recording of this annexed deed, conveying certain land from John Wager and John Wager, jun., to the United States: Now, thereof be it known that we, the subscribers, party to the aforesaid deed, do covenant, consent, and agree to and with the United States, that the aforesaid non-recording of said deed does and shall not in any way invalidate the same; and we do, by these presents, acknowledge said deed to be just, true and firm, and that the date thereof shall be on the first day of February, one thousand seven hundred and ninety-

seven, instead of the 15th day of June, one thousand seven hundred and ninety-six, and that the recording thereof take place from and after the said first day of February, anything in the deed aforesaid to the contrary notwithstanding.

Given under our hands and seals, at Harper's Ferry, in the county of Berkeley, Commonwealth of Virginia, this first day of February, one thousand seven hundred and ninety-seven.

JOHN WAGER, [SEAL.]
JOHN WAGER, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
ROBERT WHITTELL,
THOS. WILLSON,
WILLIAM MEREDITH.

CITY OF PHILADELPHIA, *sct.*

Before me, Matthew Clarkson, esquire, mayor of the city of Philadelphia, came Mary Wager, one of the grantors of the within written indenture named, and in due form of law acknowledged the same to be her act and deed, and desired it might be recorded as such, she being nineteen years and ten months of age.

In testimony whereof I, the said mayor, have hereunto set my hand and caused the seal of the mayoralty of the said [SEAL.] city to be hereunto affixed, the 23d day of June, in the year of our Lord one thousand seven hundred and ninety-six.

MATTH. CLARKSON, *Mayor.*

At a court held for Berkeley county, the 20th day of July, 1797, this indenture was acknowledged by John Wager and John Wager, jr., two of the parties thereto; which, together with the duly authenticated certificate as to the execution of Mary Wager, the other party, and the other endorsements thereon appearing, is ordered to be recorded by the court.

Teste: MO. HUNTER, *C. B. C.*

I do hereby certify that the foregoing is a true copy from the records.

Teste:

JACOB VAN DOREN, *C. B. C.*

Also a deed from Robert Griffith to Thomas Rutherford and others, ex'rs and executrix of Thomas Rutherford, dec'd, in the words and figures following, viz: This indenture, made this ninth

day of January, in the year of our Lord one thousand seven hundred and ninety-seven, between Robert Griffith, of Harrison county, in the State of Kentucky, eldest son and heir-at-law of Robert Griffith, late of Berkeley county, in the Commonwealth of Virginia, deceased, of the one part, and Thomas Rutherford and Mary Rutherford, executor and executrix of Thomas Rutherford, junior, deceased, late of the said county of Berkeley, of the said Commonwealth of Virginia, and county of Berkeley aforesaid, of the other part, witnesseth: That whereas Robert Harper, late of the county of Berkeley, and Commonwealth of Virginia, deceased, was in his lifetime seized in fee, of and in one certain tract of land situate, lying and being at the confluence of Potomac and Shenandoah rivers, in the said county of Berkeley, containing one hundred and twenty-five acres, for which he obtained a deed from the proprietor of the Northern Neck of Virginia, bearing date the 5th day of April, 1757, and also of one other tract of land contiguous thereto, containing ninety-two acres, for which the said Robert Harper obtained a deed from the aforesaid proprietor, bearing date the 19th day of April, 1762, and being so seized, did, by his last will and testament, bearing date the 26th day of September, 1782, devise unto his nephew, the above mentioned Robert Griffith the elder, one equal moiety or half of the above described one hundred and twenty-five acres of land, comprehending a saw-mill thereon, and an island in Shenandoah river opposite thereto; and also devised to the said Robert Griffith the elder, all the within described tract of ninety-two acres of land, as by the aforesaid will of the said Robert Harper, duly recorded in the said county court of Berkeley, may more fully appear: Now, this indenture witnesseth, that for and in consideration of the sum of twelve hundred pounds, current money of Virginia aforesaid, to the said Robert Griffith in hand paid by the said Thomas Rutherford, William Darke, Van Rutherford, and Mary Rutherford, executors and executrix of the said Thomas Rutherford, jun., deceased, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and confirmed, and by these presents doth grant, bargain, sell, alien, and confirm unto the said Thomas Rutherford, William Darke, Van Rutherford, Mary Rutherford, and their heirs and assigns, all of the within described moiety or half of the aforesaid tract of one hundred and twenty-five acres of land; and also all that other tract of ninety-two acres of land, contiguous to the said moiety, the courses and distances including the said moiety of land; and also the aforesaid tract of nenety-two acres of land adjoining thereto, are as follows, to wit: Beginning at three sycamores on the bank of the Shenandoah river, the beginning corner of the above described 125 acres of land; also corner to the lands of Thomas Wilson;

then along Wilson's line N. 2 W. 136 poles to a stake in a field; then N. 79 W. 168 poles to a young white oak, corner to the said Thomas Wilson, and the lands of Messrs. Potts, Wilson & Co.; then along the line of Messrs. Potts, Wilson & Co. N. 6 E. 105 poles to a stake on the bank of the Potomac river, corner to the aforesaid ninety-two acres tract; then running down and bounding on the said river N. 63 E. 62 poles, S. 61 E. 315 poles to a fallen chestnut tree, near a marked sugar-tree on the bank of the said river; extending thence, crossing the aforesaid 125 acre tract, and with the line of the other moiety or half of the said 125 acre tract of land, lately conveyed to the United States by John Wager, S. 116 poles to a young black oak on the bank of Shenandoah river; then running upward, binding on the said river N. 87 W. 16 poles, S. 74 W. 20 poles, S. 28 West 34 poles, S. 70 W. 28 poles, W. 20 poles, N. 82 W. 20 poles, N. 78 W. 13 poles to the beginning, containing three *three* hundred and ten acres, be the same more or less, together with all tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining: To have and to hold the lands, tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining, hereby intended to be bargained and sold, free and clear of and from all incumbrances whatsoever, to the said Thomas Rutherford, William Darke, and Van Rutherford, Mary Rutherford, and their heirs and assigns forever, to the only proper use and behoof of them, the said Thomas Rutherford, Wm. Darke, Van Rutherford, Mary Rutherford, their heirs and assigns; and the said Robert Griffith, for himself, his heirs, the lands, tenements, and hereditaments and appurtenances aforesaid, to the said Thomas Rutherford, William Darke, Van Rutherford, Mary Rutherford, their heirs and assigns, against him, the said Robert Griffith, his heirs and assigns, shall warrant and forever defend, by these presents.

In witness whereof, the said Robert Griffith has hereunto set his hand and seal, the day and year first above written.

ROBERT GRIFFITH. [L. S.]

Sealed and delivered in the presence of—

JOHN MINTER,
PRESLEY WILLIAMS,
JAMES GLENN,
ABRAHAM SHEPHERD,
JAMES MORRISON.

At a court held for Berkeley county the 20th day of April, 1797, this indenture was proved by the oath of Abraham Shepherd, one of the witnesses thereto, and ordered to be, and at a court held for the said county the 26th day of June, in the year aforesaid, the same was further proved by the oath of James Glenn, another wit-

ness thereto, and ordered to lie as aforesaid; and at a court held for the said county the same was further proved by the oath of Presley Williams, another witness thereto, and ordered to be recorded by the court.

Teste: MO. HUNTER, *C. B. C.*

The foregoing is a true copy from the records.

Teste: J. VAN DOREN, *C. B. C.*

Also a deed from Thomas Rutherford, Wm. Darke, Van Rutherford, Mary Rutherford, ex'or and executrix of Thomas Rutherford, jr., dec'd, to George Washington, President of the United States, in the words and figures following, viz:

This indenture, made this 12th day of February, in the year of our Lord one thousand seven hundred and ninety-seven, between Thomas Rutherford, William Dark, Van Rutherford, and Mary Rutherford, executors and executrix of Thomas Rutherford, jr., deceased, of the county of Berkeley, and State of Virginia, of the one part, and George Washington, President of the United States, for and in behalf of the said United States, of the other part, witnesseth: That the said executor and executrix, by virtue of the last will and testament of the said Thomas Rutherford, junior, deceased, and for and in consideration of the sum of ten thousand dollars to them in hand paid by the said George Washington, President of the United States, for and in behalf of the said United States, the receipt whereof they do hereby acknowledge, and thereof do forever release, acquit, and discharge the said United States, they, the said executors and executrix, do hereby grant, bargain, sell, alien, release, and confirm unto the said George Washington, President of the said United States, and his successors forever, a certain tract or parcel of land situate, lying, and being in the said county of Berkeley, and near the confluence of the rivers Potomac and Shenandoah, and bounded as follows: Beginning at three sycamores, corner to Thomas Wilson, on the north bank of Shenandoah, and running thence with the said Wilson's lines, north two degrees west one hundred and thirty-six poles, to a white oak corner; thence north seventy-three degrees west thirty-six poles, to a stake in a field; thence north seventy-nine degrees west one hundred and sixty-eight poles, to a small white oak growing out of stump, corner to said Wilson and the lands of Potts, Wilson & Co.; thence with their line north six degrees east one hundred and five poles, to a stake on the banks of the Potomac, where the corner of the entire tract stood; thence down Potomac river north sixty-three degrees east sixty-two poles; thence south sixty-one degrees east three hundred and fifteen poles to a chestnut stump near a marked sugar-tree; thence leaving Poto-

mac and crossing the entire tract with the line of a piece, parcel or tract of land convey to the United States by John Wager, and his wife Mary, John Wager, jun., Margaret Wager, south one hundred and sixteen poles to a small black oak tree on the bank of the Shenandoah; thence up the same with the meanders with eighty-seven degrees west sixteen poles south, seventy-four degrees west twenty poles south, twenty-eight degrees west thirty-four poles south, seventy degrees west twenty-eight poles west, *twenty-eight poles west*, twenty poles—north eighty-two degrees west 26 poles, north seventy-eight degrees west fifteen poles, to the beginning—containing three hundred and ten acres, be the same more or less, which said tract or parcel of land contains one moiety of a tract of land granted to Robert Harper, dec'd, by the late Lord Fairfax, proprietor of the Northern Neck, by patent bearing date on the fifth day of April, in the year of our Lord one thousand seven hundred and fifty-one; and also one entire tract granted to the said Robert Harper, deceased, by the said proprietor, by patent bearing date on the nineteenth day of April, in the year of our Lord one thousand seven hundred and sixty-two, and were devised by the said Robert Harper, by his last will and testament, duly proved and recorded in the court of the said county of Berkeley, to a certain Robert Griffith, now deceased, and conveyed by Robert Griffith, eldest son and heir-at-law of the said Robert Griffith, deceased, by his deed bearing date on the ninth day of January last past, to the aforesaid Thomas Rutherford, William Dark, Van Rutherford, and Mary Rutherford, executors and executrix of Thomas Rutherford, jun., deceased, and all houses, buildings, orchards, meadows, ways, waters, water-courses, mills, mill-dams, and other appurtenances whatsoever, to the said tract of land hereby conveyed belonging, or in anywise appertaining; to have and to hold the said tract of land hereby conveyed, together with all and singular the appurtenances thereunto belonging, unto the said George Washington, and his successors, Presidents of the United States, and for the use of the said United States forever, to and for the use and behoof of the said United States, and to and for no other use and behoof whatsoever, and free and clear of every charge or incumbrance whatsoever; and the said Thomas Rutherford, William Darke, Van Rutherford, Mary Rutherford, for themselves, their heirs, the aforesaid tract of land hereby conveyed, with all and singular the appurtenances thereunto belonging, unto the said George Washington, President of the United States, and successors, for the use of the United States as aforesaid, against them, the said Thomas Rutherford, William Darke, Van Rutherford, and Mary Rutherford, and their heirs, jointly and severally, &c., against the claim of all and every person or persons whatsoever, shall and will warrant and forever defend by these presents. In witness whereof the parties to these pres-

ents have hereunto set their hands and seals the day and year first above written.

THOMAS RUTHERFORD, [SEAL.]
WILLIAM DARKE, [SEAL.]
VAN RUTHERFORD, [SEAL.]
MARY RUTHERFORD, [SEAL.]
GO. WASHINGTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
THOMAS WHITE,
PAUL CEEDMORE,
HERRONEMOUS PROSPECK,
WILLIAM DELEYED,
JOHN GRANTHAM, JR.,
THOMAS SMALLWOOD,
SAMUEL JAMES.

Witness to the signature of George Washington—
TOBIAS LEAR,
B. DANDRIDGE,
GEORGE W. CRAIK.
3d March, 1797.

This deed is deemed sufficient in law.

CHARLES LEE,
Att'y Gen. U. S.

At a court held for Berkeley county, the 25th day of September, 1797, this indenture was acknowledged by Thomas Rutherford and Van Rutherford, two of the parties thereto, and ordered to lie . And at a court held for the said county, the 24th day of Septem'r, 1798, the same was further acknowledged by William Darke and Mary Rutherford, two other parties thereto, and ordered to be recorded by the court.

Teste: H. BEDINGER, *C. B. C.*

The foregoing is a true copy from the records as they now exist in my office.

July 18th, 1850.

Teste: JACOB VAN DOREN, *C. B. C.*

The def't also introduced in evidence an entry by James Nickolas, of Frederick county, in the words and figures following, viz:

1750, April 4.—Surveyed.

James Nickole, of Frederick county, entered about two hundred

grants, or patents of lands, or titles to lands; and it is believed that the papers which existed prior to that period were lost by removal from the seat of government, or were destroyed by the enemy during the war of the Revolution.

GEORGE W. MUNFORD,
Sec'y of the Com'th.

The def't also gave in evidence the plat and report of survey, as made in this cause by A. D. Trotter as aforesaid, and evidence tending to prove that the beginning corner of said Harper's patent was actually on the bank of the Shenandoah river, at A on the map; and that the third corner of said patent was at or very near the point of junction of the two rivers Shenandoah and Potomac; and that the next corner, at the end of the distance of 200 poles up the Potomac river, was near the bank of said river, at the point G or 18; and that the general course of said two rivers was, as laid down on the s'd plat, in relation to the four said first lines of said Harper's patent. He further introduced evidence tending to show that the United States of America, between the years 1796 and 1800, established an arsenal and armory for the repair and manufacture of arms on the land in controversy, purchased, as aforesaid, in the name of George Washington, and erected thereon all necessary buildings, and has used and occupied the same as an arsenal and armory ever since to this time; that the defendant is an officer in the military service of the United States, attached to the ordnance department, and as such was in charge of and in possession of the land in controversy, with the buildings thereon and the armory of the U. States at Harper's Ferry, under an order from the ordnance department; and that the lands aforesaid had been in like charge of his predecessors under orders and appointments from the said ordnance office or the War Department of the U. States from May, 1829, to the period when def't took possession; and that prior to May, 1829, as far back as the year 1800, the said lands and buildings were in like charge of other persons in the service of the United States at the said armory. Defendant further offered proof to show that the original patent in parchment, issued as aforesaid to Rob't Harper, had been lost; and to correct manifest error in the first call in the official copy shown in evidence on his behalf as aforesaid, offered proof to show that said original parchment patent was in possession, in the years 1825 and 1827, of Mrs. Catharine Wager, widow of John Wager, jun'r, dec'd, who was the son of John Wager, sen., the latter being the husband of Sarah Harper, devisee of Robert Harper, dec'd; and then offered proof to show that the courses and distances had been copied from said original parchment in the years 1825 and 1827, respectively, by the deputy surveyor of Jefferson county, where the lands lie, for the purpose of survey, and were used by him in a survey of the tract patented

as aforesaid to Robert Harper between the Wagers, who claimed under said Robert Harper and the U. States of America; and offered further proof to show that said courses and distances had been copied from the same original patent in 1816 or 1818 by John Peacher, a witness in this cause, then the owner of land binding on the lines of Harper's patent, a copy of which courses and distances is as follows: "Beginning at a sycamore, standing on the edge of the Shenandoah river, and extending thence down the said river S. 55 E. 44 poles, N. 66 E. 72 poles to a sycamore standing at the point; and thence up Potomack river N. 48 W. 200 poles to a chestnut tree, standing near Potomac opposite to a small island; thence west 105 poles to a white-oak; thence south 140 poles to a red-oak; thence east 150 poles to the beginning." Defendant further offered evidence to prove that John Wager, one of the grantors in said deed to George Washington, President of the United States, before referred to, was the husband of Sarah Harper, devisee as aforesaid of Robert Harper; and that John Wager, jun., Margaret Wager, and Mary Wager, the other grantors therein, were children of John Wager, the first named, and said Sarah Harper.

Such being the state of the evidence, the defendant moved the court to give the jury the following instructions, viz: "That the patent to Robert Harper, having its beginning corner *to* on the Shenandoah river, and calling to extend thence down the river by course and distance to the point where it appears, from the survey made in this cause, the river Shenandoah unites with the Potomac; and from that point up the river Potomac by course and distance to a corner near the last named river, opposite to a small island. In construction of law, the two rivers are thereby made the boundaries of said patent from said beginning on the Shenandoah to the last named corner on the Potomac; and if the jury believe, from the evidence, that the lands claimed by the plaintiffs lay along the rivers Shenandoah and Potomac, within the lines of the patent to Robert Harper, extended as aforesaid to the two rivers, they must find for the defendant—the patent under which the plaintiff claims being junior to that of Harper's, under which the defendant claims—unless the plaintiffs should establish a title to the lands in controversy other than through their said patent.

On the same state of the evidence, the plaintiffs also moved the court to instruct the jury as follows: That the question as to how the survey, on which this patent of Robert Harper was issued, was actually run, is in this case of a question of fact for the jury; and if the jury believe that the line from the sycamore, at the point of confluence of the Shenandoah and Potomac rivers to the chestnut tree, was actually run a straight line, then that straight line is the boundary of Robert Harper's patent. But the court gave the instruction asked for by the defendant, and refused to give the instruction asked for by the plaintiffs; to which opinions and action

No. 14

U.S. Sept. 1847

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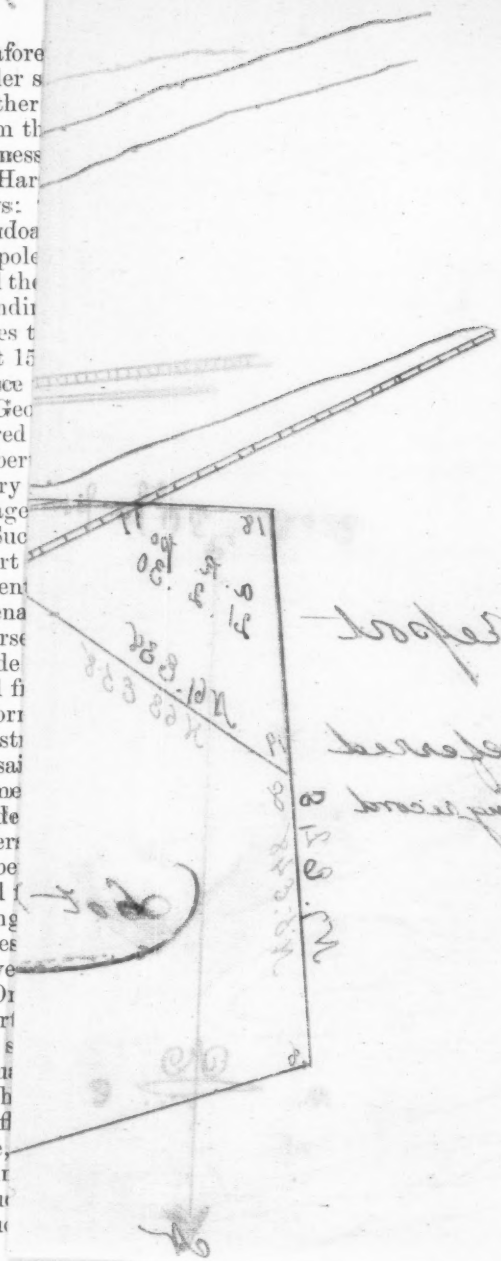

of the court giving the defendant's instruction and refusing the plaintiffs' instruction the plaintiffs, by counsel, except, and their exceptions are here sealed by the court.

JOHN W. BROCKENBROUGH. [SEAL.]

I, Erasmus Strilling, clerk of the district court of the United States for the western district of Virginia, hereby certify that the foregoing is a true transcript of the records and proceedings of the case therein mentioned, lately depending in said court; and that the plats and reports, marked respectively A and B, hereto appended, are true copies of the plats and reports returned and filed in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Staunton, this 29th day of March, [L. S.] A. D. one thousand eight hundred and fifty-five, and in the 79th year of the independence of the United States.

ERASMUS STRILLING,
Clk D. C. U. S. W. D. Va.

Fee for record and plats	$31 45
" " postage	51
	$31 96

Charged to demandants.

Plat and Report marked A.

[*For plat see original, page* 55.]

NOTE. The courses and distances in black ink are those given in the original R. Harper patent, and those in red ink indicate them as they were recently run by me, allowing the proper degree of variation.

The red lines embrace the portion which is claimed by Jacob B. Brown and others as waste and unappropriated land.

The above (below) map represents the two tracts of land (lot No. 1, of 125 acres, and lot No. 2, of 92 acres) owned by the United States at Harper's Ferry.

GEORGE MAUZY, *C. S.*

April 12, 1854.

of the court giving the defendant's instruction and refusing the plaintiffs' instruction the plaintiffs, by counsel, except, and their exceptions are here sealed by the court.

JOHN W. BROCKENBROUGH. [SEAL.]

I, Erasmus Strilling, clerk of the district court of the United States for the western district of Virginia, hereby certify that the foregoing is a true transcript of the records and proceedings of the case therein mentioned, lately depending in sa l court; and that the plats and reports, marked respectively A and B, hereto appended, are true copies of the plats and reports returned and filed in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Staunton, this 29th day of March, A. D. one thousand eight hundred and fifty-five, and in the 79th year of the independence of the United States. [L. S.]

ERASMUS STRILLING,
Clk D. C. U. S. W. D. Va.

Fee for record and plats	$31 45
" " postage	51
	$31 96

Charged to demandants.

Plat and Report marked A.

[*For plat see original, page* 55.]

NOTE. The courses and distances in black ink are those given in the original R. Harper patent, and those in red ink indicate them as they were recently run by me, allowing the proper degree of variation.

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The above (below) map represents the two tracts of land (lot No. 1, of 125 acres, and lot No. 2, of 92 acres) owned by the United States at Harper's Ferry.

GEORGE MAUZY, *C. S.*

April 12, 1854.

Plat and Report marked B.

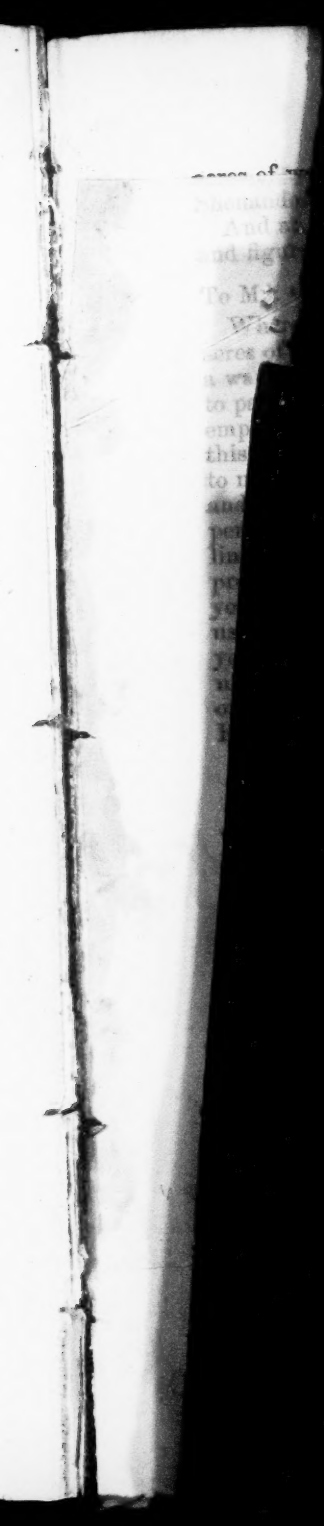
[*For plat see original, page* 56.]

To the Hon'ble Judge of the United States Court for the western district of Virginia:

In obedience to an order of the district court of the United States for the western district of Virginia, made on the 5th day of May, 1854, in a suit pending in said court, in which Jacob B. Brown and others are plaintiffs, and Benjamin Huger is defendant, after due notice to the parties, I proceeded, on the premises at Harper's Ferry, on the 8th day of August, 1854, to discharge the duties required of me in said order—Jacob B. Brown, one of the plaintiffs, and James M. Mason, counsel for the defendant, being present; John C. Unsel and Fountaine Beckham, two of the plaintiffs, and Mr. Green, counsel for the plaintiffs, were subsequently present.

1, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, and 1, represent the land claimed by the plt'ffs, under a patent issued to Jacob B. Brown and Jacob Nisswaner on the 29th day of July, 1851, containing thirty-nine and a half acres, situate in the county of Jefferson, at the confluence of the rivers Potomac and Shenandoah, and bounded as follows, viz: Beginning at the angle of the wall at the present junction of the rivers aforesaid, marked (1) on the above plot; thence up the Shenandoah, with its meanders, S. 48½° W. 39$\frac{4}{10}$ poles, to (5,) S. 64¼ W. 32 poles, to (6,) S. 85¾ W. 18 poles, to (7,) N. 55° W. 13½ poles, to (8;) thence, leaving the river, N. 59° 24′ E. 74½ poles, to a point in Shenandoah street at (10,) N. 58° 52½′ W. 200 poles, to a point in the United States canal at (11;) thence N. 86½° E. 17 poles, to the Potomac river at (12;) thence down the Potomac, with its meanders, S. 80¼° E. 34 poles, to (13;) S. 72¾° E. 20 poles, to (14;) S. 68¼° E. 26 poles, to (15;) S. 58° E. 9 poles, to (16;) S. 51¼° E. 114 poles, to (17,) at the end of Potomac river bridge, and S. 22¼° E. 12 poles, to the beginning. This land was not surveyed by me, but laid down from the patent, which is herewith returned as a part of this report, and to which reference is here made for a more particular description.

The defendant claims all the land embraced in the above survey of 39½ acres—that is, all the land lying between the rivers Potomac and Shenandoah and the lines G H, H I,—for whom I surveyed, as follows: Beginning at a leaning sycamore on the north bank of the



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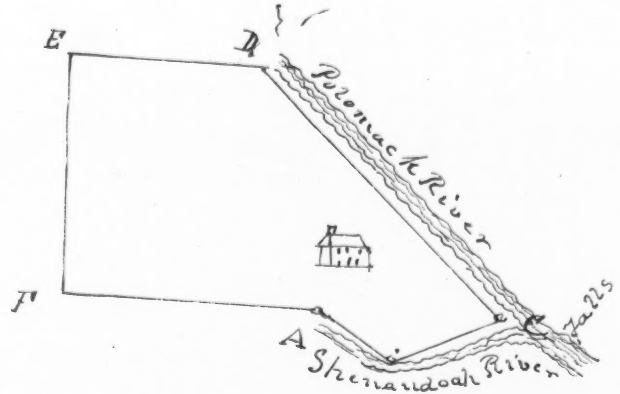

N.
W. E.
S.

acres of waste and ungranted land where he lives, at the mouth of Shenandoah river.

And an order from Lord Fairfax to Guy Broadwater, in the words and figures following, viz:

To Mr. Guy Broadwater:

Whereas James Nickols hath informed that there are about 200 acres of waste and ungranted land where he now lives, and desiring a warrant to survey ye same, in order to obtain a deed, being ready to pay ye composition and office charges: These are, therefore, to empower you, ye said , to survey ye said waste land, provided this be ye first warrant that hath issued for ye land, and you are to make a just and accurate survey thereof, describing the course and distance per pole; also ye cuttings and boundings of the several persons' lands adjoining; and where you cannot join to any known lines, you are to make ye breadth of ye tract to bear at least ye proportion of one-third of ye length, as ye law of Virginia directs; you are also to insert ye name of ye pilote and chain carryers made use of and employed; a plat of which said survey, with this warrant, you are to give into this office any time before day of next ensuing. Given under my hand and seal of ye proprietor's office, this day of , in ye twenty year of his majesty King George ye second reign.

FAIRFAX.

And a plat and certificate of survey by said Broadwater, in the words and figures following, viz:

[*For plat see original, page* 49.]

By virtue of a warrant from ye proprietor's office, dated the 4th of April, 1750, granted to James Nickols one certain parcel or tract of land, situated and lying in Frederick county: beginning at A, a *sick*amore standing upon ye edge of Shenandoah, extending down ye said river S. 55 E. 44 poles to B; thence N. 66 E. 72 poles to C, a *sick*amore standing upon ye pitch of ye point of Shenandoah; thence up Potomac N. 48 W. 200 poles to D, a chestnu*tt* tree standing near Potomac river, side opposi*tt* to a small is*l*eland; thence

W. 105 poles to E, a white oak; thence S. 140 poles to F, a red oak; thence east 150 poles to ye beginning, containing 125 acres.
Surveyed by me.

GUY BROADWATER.

JOSEPH CANTUELL,
JAMES NICHOLS,
Chain Carriers.

Endorsed: Deed drawn, but not p'd.
Deed issued, and dated 25th April, 1751.

The foregoing are copies of papers on file in the Virginia land office.

Teste: S. H. PARKER, *Reg. L. Office.*

With an official certificate from S. H. Parker, register of Va. land office, in the words and figures following, viz:

VIRGINIA LAND OFFICE,
Richmond, June 27, 1854.

I, S. H. Parker, register of the land office of Virginia, do hereby certify, that it does not appear that any grant has been issued on the survey made by James Nickols, for 125 acres of land in Frederick county, to any person except Robert Harper, to whom a grant issued on the 25 day of April, 1751, which date agrees with the date endorsed on said Nickols' survey. And I further certify, that I can find no survey of Robert Harper for 125 acres on file in this office. And I further certify, that the following is a copy from the first page of the entry books received in this office from the proprietor of the Northern Neck: 'The rules of the proprietor's office are, that no entries made for land are in force or demandable after the expiration of six months, and no warrants to continue longer in force than six months, unless consented to and renewed by the proprietor or his agent.'

S. H. PARKER,
Reg. Va. L. Office.

And an official certificate from George W. Munford, secretary of the Commonwealth, in the words and figures following, viz:

EXECUTIVE DEPARTMENT,
Richmond, June 26, 1854.

I hereby certify, that it appears, from an examination of the files of papers in this department, that there are few, if any, papers relating to the business of the executive of Virginia prior to the year 1780; and that these few have no connection with, or reference to, surveys,

Shenandoah, at A, corner to a survey made for George Reynolds, and transferred by him to George Stubblefield; this corner is claimed by the def't, and admitted by the plt'ff, Brown, to be the beginning corner of the patent issued to Robert Harper for 125 acres, on the 25th day of April, 1751; it is also the tree referred to by John Peacher, in his deposition, as the beginning corner of the Harper patent. Thence S. 62½° E. 44 poles, to B; this line is not found in the copy of Harper's patent, but is found in a survey of 125 acres made by Guy Broadwater for James Nichols, and is adopted here instead of the first line in the copy of the patent. Thence N. 58½° E. 76 $\frac{12}{100}$ poles, to a stake at C, 61 feet N. 50° E. from the south corner of the abutment of the railroad bridge and 59 feet from the first pier of the bridge, and at or near the confluence of the rivers Potomac and Shenandoah. This point was shown me by S. R. Jackson and Jacob Mohler, and referred to by them in their depositions as the point at which a sycamore stood at the junction of the two rivers. To run from the beginning corner to this point requires a variation of 7½° upon each line, and an increase of 4 $\frac{12}{100}$ poles on the distance of the second line of the patent. From this point I run N. 50° W. 123 poles, up the Balt. and Ohio railroad, to the middle of the north end of a bridge at D; thence, continuing along the railroad, N. 60° W. 22 poles, to E; N. 69½° W. 30 poles, to F; N. 80° W. 28⅓ poles, to G; this point is on the railroad embankment, 9 feet south of the rail and 17 feet south of a wall on the north side of the road, and opposite a small island in the Potomac river, and was shown to me by James M. Brown as the point or near the point established in a former controversy for the fourth corner of the Harper patent—this point is N. 58° W. 199½ poles from the point C, making a variation of 10° in bearing, and a loss of ½ a pole in distance of the patent. Thence S. 88¾° W. 129¾ poles, to within 11 feet of a cut stone at H; this line varies 1¼° in bearing from the patent, and the distance is increased 24¾ poles—the cut stone is admitted, both by the plt'ff and def't, as the 5th corner of the patent. Thence south 148½ poles, passing a cut stone at L at 15 poles, and crossing the Charlestown road at 28 poles, to the S. E. corner of a small frame house on the north bank of the Shenandoah river at I, and is claimed by the def't as the 6th corner of the patent; this line is 8½ poles longer than called for in the patent; this point was shown by James M. Brown and Jacob Mohler, and is 6¾ poles above the S. E. corner of a house marked Q, and 10¾ poles above the western guard gate in the canal, and is nearly opposite the eastern end of Thropp's island. Thence N. 82½° E. 197 poles, to the beginning; this line is varied 7½° from the bearing in the patent, and the distance is increased 47 poles—this survey contains 207 acres, 2 roods, and 33 poles.

The plt'ffs deny that the foregoing survey represents truly the boundaries of the Harper patent, and claim that A, 9, 10, 11, H,

19, and A, represent the true boundary, and contains 167 acres and 17 poles, and is bounded as follows, viz: Beginning at the sycamore at A, thence S. 51½° E. 20 poles, to (9;) thence N. 59½° E. 72 poles, to (10;) N. 59° W. 200 poles, to (11;) S. 86½° W. 105 poles, to the cut stone at H; thence S. 3½° E. 140 poles, to (19;) thence N. 84¾° E. 190 poles, to the beginning. This survey was not made by me, but laid down from a survey made in this case by George Mauzy on the 5th day of Oct., 1853.

K, M, N, and O, represent a portion of the lines of a tract of land granted to Gersham Keys on the 5th day of Jan'y, 1763, which were run by me, as follows: Beginning at a cut stone at K, the third corner of the patent; thence S. 70¼° E. 100 poles, passing the cut stone at L at 36 poles, to a point in the Charlestown road at M; this is the second corner of the patent, and is in view of the Potomac river. Thence S. 17½° E. 103 poles, to the bank of the river Shenandoah at N, the beginning corner of the patent; thence S. 51 W., crossing the river in the direction of O. Gersham Keys, in conveying this land to John Semple, by deed dated June 9th, 1763, conveyed by the lines KL, LI, and thence up the river in the direction of P—this deed calls for three sycamores at I, Harper's corner, opposite the lower end of an island. I also run a portion of the lines of a tract of land conveyed by John C. Calhoun, Secretary of War, to George Rowles, by deed dated April 6th, 1824—beginning at a leaning sycamore on the bank of the Shenandoah river, corner to Widow Fouke and Rokenbang, at P, called for in the deed referred to as a sycamore and elm; thence, down the meanderings of the river, N. 40½° E. 20 poles, N. 56½° E. 26 poles, N. 27½° E. 16 poles, N. 74¼° E. 22 poles, to the corner of the house at I.

I also, at the request of the def't, run the following level lines, from the surface of the water in the fore bay at Y, to the surface of the water at the junction C, and found the fall from Y to C to be 27 feet 8 inches; the fall from the corner of the reservation at X to C is 22 feet 3 inches; the fall from the front of the arsenal at W to C is 22 feet; from the surface of the water in the Shenandoah river, below the canal dam at V, the fall is 27 feet 5 inches to the point C.

T, represents the point designated by R. H. Williamson, in his deposition, as the point where a sycamore stood at the point, and is 23½ feet from the point C, and 44 feet from the south corner of the abutment of the bridge; R, the old ticket office; S, the old warehouse; and Z the point where Green's wagon tavern stood.

At the request of the plaintiffs' counsel, I run the following lines and made the following measurements: Beginning at G; thence to the United States canal, 62 feet. From G to the top of the wall on the north side of the road is 17 feet. I took the height of this point above the river, which is 27 feet, and is 6½ feet above the top

of the bank of the canal, which is 10 feet wide; the canal is 77 feet wide at this point. There is a ravine between the point G and the canal 14 feet deep, and a little below G the ravine is 19 feet deep. From G, I run S. 82½° W. 19¼ poles, to 18, a point in the United States canal, 34 feet from the western bank, and 42 feet from a lynn on the bank; this is the point shown by John Sellers, and referred to in his deposition as the point where the chestnut, the 4th corner of the patent, stood. Thence S. 59¼° E. 212 poles, to a sycamore stump at 2—this is the sycamore stump referred to in the plaintiff's deposition; thence N. 49° E. 8⅓ poles, to the point C.

U represents the point shown by the plaintiffs' witnesses as the point of land where the two rivers met, which is 33 feet S. 45¾° W. from the point C, and 28 feet from the south corner of the abutment of the bridge; 2, the sycamore stump referred to as nearest the point, which is 135 feet S. 49° W. from C; 3, the south corner of the smith-shop, which is 140 feet S. 49° W. from C; 4, the south corner of the slaughter-house, which is 155 feet S. 49° W. from the point C. 1 2 and 2 3 represent the N. W. and S. W. lines of the ferry reservation; the line 2 3 is nearly parallel to the line C D, and 167½ feet from it.

All of which, together with the title-papers and depositions taken upon the premises, are herewith respectfully submitted.

A. D. TROTTER, *Sur'r.*

NOTE. The line from A to black 5 represents the first line of the survey run from the beginning point, with a variation of 3½°—the point 5 is in the edge of the Shenandoah river; from black 5 to 6 represents the second line of the patent, run with the same variation, and an increase of 6½ poles in the distance—the point 6 is in the Shenandoah river, $6\frac{86}{100}$ poles S. 27½ E. from the point C; from C to black 7 represents the third line of the patent, with a like variation of 3½°.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the judge of the District Court of the United States for the western district of Virginia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court before you between Jacob B. Brown, Jacob Nisswaner, Fontaine Beckham, John C. Unsold, and George Washington Moler, plaintiffs, and Benjamin Huger, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties